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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/662,599	09/15/2003	Bruce L. Kennedy	02580-P0085B	2356

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EXAMINER

SMITH, PHILIP ROBERT

ART UNIT

PAPER NUMBER

3739

DATE MAILED: 07/07/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/662,599

Applicant(s)

KENNEDY, BRUCE L.

Examiner

Philip R. Smith

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 17 April 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-48 is/are pending in the application.
- 4a) Of the above claim(s) 1-18 and 32-45 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 19-31 and 46-48 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections

- [01] The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
- [02] Claims 19-27, 29-31 & 46-47 are rejected under 35 U.S.C. 102(a) as being anticipated by Winkler, for the reasons set forth in the Office action of 3/17/2006.
- [03] Claim 28 is rejected under 35 U.S.C. 103(a) as being unpatentable over Winkler in view of Adair and Bodicker, for the reasons set forth in the Office action of 3/17/2006.
- [04] Claim 48 is rejected under 35 U.S.C. 103(a) as being unpatentable over Winkler in view of Kohls, for the reasons set forth in the Office action of 3/17/2006.

Response to Arguments

- [05] Applicant's arguments filed 4/17/2006 have been fully considered but they are not persuasive. Applicant reiterates that "the magnetic programming head... disclosed by Winkler does not generate an image stream and therefore cannot anticipate Claim 19." Respectfully, the rejection is maintained:
- [06] Applicant claims "a medical video instrument having touch screen control." Winkler provides "an implantable medical device" along with "portable computer equipment for use with implantable medical devices" (1/7). It is maintained that an IMD and its associated computer equipment constitute a "medical video instrument." Winkler provides a "display screen 206 ... provided with touch-

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sensitivity capability" (12/29-30). It is maintained that "206" constitutes a "touch screen control."

[07] Applicant further claims "a touch screen for entering control commands to control said medical video instrument." Winkler provides a touch screen, as noted above, and a "stylus 208" (12-67) with which to "such that a user can interact with the internal computer" (12/30) or "assist in programming IMD 10" (13/6). It is maintained that these are examples of "control."

[08] Applicant further claims that "said medical video instrument [generates] an image stream for display on said touch screen." Winkler provides a touch screen, as noted above. Certainly *something* is inherently being displayed on the touch screen. It is maintained that whatever is being displayed constitutes an "image stream." Certainly this image stream is inherently being generated *somewhere*. It is maintained that the image stream is being generated by some element which composes Winkler's "medical video instrument."

Conclusion

[09] **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

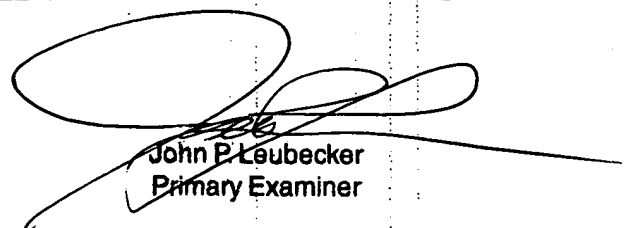
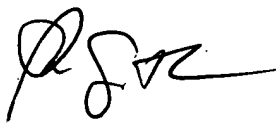
[10] A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory

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period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

- [11] Any inquiry concerning this communication or earlier communications from the examiner should be directed to Philip R. Smith whose telephone number is (571) 272 6087 and whose email address is philip.smith@uspto.gov. The examiner can normally be reached between 9:00am and 5:00pm.
- [12] If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Linda Dvorak can be reached on (571) 272 4764.
- [13] Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

prs



John P. Leubecker
Primary Examiner